

Model Ordinances for Implementing Chapter NR 135, Wisconsin Administrative Code:

A Guide for Wisconsin Counties, Cities Villages and Towns

Part I. Introduction

This document contains model ordinances and related material prepared by the Wisconsin Department of Natural Resources to assist counties, cities, villages and towns in implementing programs to carry out the requirements of Chapter NR 135, Wisconsin Administrative Code. The models are intended to assist these units of government in enacting their own ordinances, but are meant to be advisory only. Counties and local units of government may use their own version of an ordinance governing nonmetallic mining reclamation that differs from either model, so long as it complies with the overall requirements of Ch. NR 135.

The models were prepared in close consultation with an external advisory group that gave generously of its time, effort and attention as Department staff developed the model ordinances. Group members include representatives of county, town and municipal governments, zoning officials, mining companies, industries that use nonmetallic minerals and legal counsel. The advisory group generally endorsed the model ordinances as useful tools for setting up and carrying out nonmetallic mining reclamation programs under Ch. NR 135 at the county or local level.

Part II. Legal Framework For Nonmetallic Mining Reclamation Programs

Subchapter I of Chapter 295, Stats. requires the Department to adopt administrative rules to establish uniform statewide reclamation standards for Wisconsin, as well as uniform requirements and procedures for Wisconsin counties, cities, villages and towns to establish reclamation programs to carry out these standards. The required rules are contained in Chapter NR 135. Beginning in 1994, the Department worked on promulgating Chapter NR 135 using a large, diverse technical advisory committee representing the mining industry, transportation industry, the environmental community and representatives of county and local governments. The result was an overall consensus product, although compromises were required from most stakeholders in order to create a rule that all affected could accept. In these cases, the Department usually decided which direction the rule should take.

Chapter NR 135 was approved by the Natural Resources Board in May, 2000. It has cleared legislative review under s. 227.19, Stats., and was published by the Revisor of Statutes on September 30, 2000 with an effective date of December 1, 2000 as the Natural Resources Board directed following advice of the Wisconsin County Code Administrators. The WCCA suggested this effective date to provide time for counties to set up reclamation programs during the less busy winter months. Section NR 135.35 requires the Department to prepare and publish one or more model reclamation ordinances for counties and municipalities to use in complying with the requirements of the rule. The following model ordinances were prepared to meet that mandate, as well as to assist counties and interested municipal government officials in anticipation of the June 1, 2001 deadline by which counties must have enacted the ordinance.

Part III. Text of Model Nonmetallic Mining Reclamation Ordinances

The text of short and long version model reclamation ordinances are included as separate PDF files.

The short version model ordinance was designed as a “bare bones” approach that would be relatively easy to read and enact. The short version model ordinance contains very little in the way of detailed provisions. Rather, it refers extensively to various sections of NR 135 for details of substantive requirements. Examples of requirements that are referred to, but not spelled out in detail in the short version model ordinance, are requirements for a reclamation plan in Section 13, and the procedures for public notice of applications for mining permits in Section 15. Detailed requirements can be clarified by referring to the text of Ch. NR 135, which may be accessed on the Internet through the Wisconsin Revisor of Statutes’ website in “PDF” format:

“<http://www.legis.state.wi.us/rsb/code/nr/nr135.pdf>”.

The long version model ordinance takes a more comprehensive approach. Developed at the urging of the model ordinance advisory group, it includes text that sets out in detail the relevant requirements in Ch. NR 135 – with adjustment for the ordinance form and style. It was developed so a county or municipality could choose to enact it verbatim, without significant reference to the text of Ch. NR 135. However, regulators and mine operators should be aware in such cases of the need to revise and update such ordinances if Ch. NR 135 is amended by the Department in the future.

Both ordinances refer extensively to a “county or municipality” in naming the regulatory authority that will administer the reclamation program. The term “municipality” in the models is intended, consistent with the definition of this term in s. NR 135.03(10) to include **towns**, as well as cities and villages.

Part IV. Instructions for Completing Nonmetallic Mining Reclamation Ordinances

Guides for “filling in the blanks” of the model ordinances are listed as separate PDF files. These are lists of what information needs to be filled in, and where, by a county, city, village or town that wishes to enact the short or long version model ordinance.

Part V. DNR Review and Passage of Nonmetallic Mining Reclamation Ordinances

When Chapter NR 135 becomes effective on December 1, 2000, counties will have six months to prepare for passage of their nonmetallic mining reclamation ordinances. Under s. 295.13, Stats., all Wisconsin counties, with the possible exception of those with populations greater than 700,000, are required to enact a nonmetallic mining ordinance that complies with and adequately implements Ch. NR 135. The legislature intended that all nonmetallic mining operations in Wisconsin comply with the uniform reclamation standards the rule establishes. If a county does not have its own ordinance, s. NR 135.17(3) requires the DNR to issue nonmetallic mining reclamation permits (except in areas within such counties where a city, village or town has enacted a NR 135-authorized nonmetallic mining reclamation program).

Following the advice of the Ch. NR 135 technical advisory committee, s. NR 135.32(1) requires that county reclamation ordinances must become effective six months after the rule comes into effect, or on June 1, 2001. This was done to avoid possible confusion under multiple effective dates in different counties and so to establish a uniform “start date” throughout Wisconsin. Section NR 135.45 establishes an informal review process of nonmetallic mining reclamation ordinances by the DNR prior to enactment by a county, which provides:

- A county or municipality intending to enact a reclamation ordinance shall provide a proposed version to the DNR at least 45 days prior to its adoption, that is on or before April 17, 2001.
- The DNR shall determine whether the proposed ordinance complies with Ch. NR 135 no later than 30 days after receipt of a proposed ordinance.
- Before the municipality enacts its proposed ordinance, it shall obtain a “determination of compliance” from the DNR. This is not a formal approval, but instead a communication intended to advise whether compliance is achieved or what further steps are needed to meet the requirements of Ch. NR 135.
- Once an ordinance is adopted, a final copy shall be submitted to the DNR.

After the June 1, 2001 “start date” for reclamation ordinances, there is a two month period for existing nonmetallic mines to prepare applications for “automatic permits” as authorized by s. NR 135.18(1). Such mines must submit applications by August 1, 2001 in order to qualify for an “automatic permit”, which must be issued within 30 days of qualifying application, with follow-up submittals to be provided between one and three years later as chosen in the reclamation ordinance. Mines that do not apply for an “automatic permit” by August 1, 2001 must submit a more extensive application meeting the requirements of s. NR 135.18(2), including obtaining approval of a reclamation plan before a reclamation permit can be issued and mining can commence. On and after September 1, 2000, all nonmetallic mine sites in Wisconsin must obtain a reclamation permit to carry out nonmetallic mining, as required under s. NR 135.16.

Cities, villages and towns may also choose to enact nonmetallic mining reclamation ordinances under s. 295.14, Stats. This is not required, but if a city, village or town chooses to exercise this

authority, the resulting ordinance supersedes any county reclamation ordinance. Cities, villages or towns may choose to do this in order to exert greater local control over nonmetallic mine reclamation and post-mining land use, as part of the trend toward increased emphasis on local land use planning.

PART VI. Where to Get Help

You can get more information about the model nonmetallic mining reclamation ordinances (including electronic copies of them), copies of NR 135 and information about nonmetallic mining reclamation by contacting the DNR contacts listed below.

Central Office:

Tom Portle
DNR
101 S. Webster Street
P.O. Box 7921
Madison, WI 53707
608.267.0877

Northeast Region:

Dave Misterek
DNR - Oshkosh Service Center
625 E. County Road Y, Suite 700
Oshkosh, WI 54901
920.424.2104

Northern Region:

Dave Kunelius
DNR
107 Sutliff Ave.
Rhineland, WI 54501
715.365.8924

Dave Kafura
DNR
810 W. Maple Street
Spooner, WI 54801
715.635.4065

South Central Region:

Jessica Maloney
DNR
3911 Fish Hatchery Road
Fitchburg, WI 53711
608.275.3298

Southeast Region:

Phil Fauble
DNR
101 S. Webster Street
Madison, WI 53707
608.267.3538

West Central Region:

Deb Pingel
DNR - Wausau Area Office
5301 Rib Mountain Drive
Wausau, WI 54401
715.359.4531